

UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

NEW MEXICO CATTLE GROWERS'
ASSOCIATION,

Plaintiff,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, et al.,

Defendants,

and

AMIGOS BRAVOS, NEW MEXICO
ACEQUIA ASSOCIATION, and GILA
RESOURCES INFORMATION
PROJECT,

Intervening Cross-Claimants-Defendants,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, et al.,

Cross-Defendants.

Case No. 1:19-cv-00988-RB-SCY

JOINT MOTION TO STAY PROCEEDINGS

Pursuant to D.N.M.LR-Civ 7.2, Plaintiffs, Defendants/Cross-Defendants (“the Agencies”), and Intervening Cross-Claimants-Defendants hereby move to stay the above-captioned proceeding until May 1, 2021. The Parties have good cause for this request.

1. In 2015, the Agencies revised the regulatory definition of “waters of the United States.” *See* Clean Water Rule: Definition of “Waters of the United States,” 80 Fed. Reg. 37,054 (June 29, 2015) (“2015 Rule”).

2. In 2017, the Agencies began reconsidering the 2015 Rule. They conducted a notice-and-comment rulemaking process, which resulted in the Agencies issuing a final rule repealing the 2015 Rule and reinstating the pre-2015 Rule regulatory definition of “waters of the United States.” *See* 84 Fed. Reg. 56,626, 56,626 (Oct. 22, 2019) (“Repeal Rule”). The Repeal Rule went into effect on December 23, 2019. *Id.* at 56,626.

3. On January 23, 2020, the Agencies signed a final rule—the Navigable Waters Protection Rule (“NWPR”)—promulgating a revised definition of “waters of the United States.” The NWPR was published in the Federal Register on April 21, 2020, and went into effect on June 22, 2020. 85 Fed. Reg. 22,250 (Apr. 21, 2020).

4. Plaintiff initiated this lawsuit on October 22, 2019, challenging the Repeal Rule. Dkt. No. 1.

5. On April 27, 2020, Plaintiff sought leave to file a supplemental complaint to add challenges to the NWPR. Dkt. No. 24. This motion for leave was granted the same day. Dkt. No. 25.

6. On June 30, 2020, the Court granted Intervening Cross-Claimants-Defendants’ motion to intervene. Dkt. No. 37.

7. Also on June 30, 2020, Intervening Cross-Claimants-Defendants filed a cross-complaint against the Agencies challenging the NWPR. Dkt. No. 38.

8. On May 26, 2020, Plaintiff filed a motion to preliminarily enjoin, in part, the NWPR. Dkt. No. 30. The Agencies and Intervening Cross-Claimants-Defendants opposed that motion. Dkt. Nos. 34, 40. Plaintiff's motion for preliminary injunction is still pending.

9. There are no other outstanding motions or deadlines before the Court in this matter.

10. On January 20, 2021, President Biden issued an Executive Order entitled "Executive Order on Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis." 86 Fed. Reg. 7037 (Jan. 25, 2021). In conformance with the Executive Order, the Agencies are reviewing many rules promulgated in the last four years, including the NWPR at issue in this case.

11. Agencies have inherent authority to review past decisions and to revise, replace, or repeal a decision to the extent permitted by law and supported by a reasoned explanation. *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009); *Motor Vehicle Mfrs. Ass'n v. State Farm Mutual Auto. Ins. Co.*, 463 U.S. 29, 42 (1983). An agency's interpretation of a statute it administers is not "carved in stone" but must be evaluated "on a continuing basis," for example, "in response to . . . a change in administrations." *Nat'l Cable & Telecomm. Ass'n v. Brand X Internet Servs.*, 545 U.S. 967, 981 (2005) (internal quotation marks and citations omitted).

12. Accordingly, the Parties request to stay this proceeding until May 1, 2021 to give appropriate officials adequate time to review the NWPR and determine whether the rule should be maintained, modified, or otherwise reconsidered. If the 10th Circuit rules on the *State of Colorado v. EPA* appeal (20-1238) before May 1, 2021,¹ the Parties will meet and confer and file a joint

¹ The Agencies have similarly filed a motion for a 60-day abeyance in the *Colorado* 10th Circuit proceeding. [Doc. ID No. 010110474124].

motion or separate proposals to further govern proceedings no later than 14 days after the 10th Circuit decision. Otherwise, the Parties will file a joint motion or separate proposals to further govern proceedings by May 1, 2021.

13. This joint motion is without prejudice to the right of any party to seek a further stay at the end of the abeyance period. The Parties retain the right to move this Court to lift the stay prior to the end of the abeyance period if circumstances warrant resuming litigation.

14. Granting this motion will not prejudice any party, will conserve the Parties' resources, and will promote the interest of judicial economy.

For the foregoing reasons, the Parties respectfully request that the Court stay this proceeding until May 1, 2021.

Dated: February 8, 2021

Respectfully submitted,

/s/ Hubert T. Lee

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CERTIFICATE OF SERVICE

I hereby certify that, on February 8, 2021, I electronically transmitted the foregoing to the Clerk of Court using the ECF system for filing and transmittal of a Notice of Electronic Filing to registered counsel for all parties.

/s/ Hubert T. Lee